

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AGRIPRO WHEAT, A Unit of
Syngenta Seeds, Inc., and
SYNGENTA PARTICIPATIONS AG,

Plaintiffs,

v.

LOREN JESSEN, d/b/a JESSEN
UNLIMITED,

Defendants.

CASE NO. 8:06CV697

CONSENT JUDGMENT
AND INJUNCTION

Pursuant to the proposed Consent Judgment and Injunction (Attachment to Filing No. 5) that has been agreed to and accepted by authorized representatives of Plaintiff AgriPro Wheat, a unit of Syngenta ("AgriPro") and of Defendants, Loren Jessen d/b/a Jessen Unlimited ("Defendants"), (hereafter collectively referred to as the "Parties"),

IT IS STIPULATED AND AGREED:

- A. This Court is the proper court of venue and jurisdiction for the action alleged in AgriPro's *Complaint* and other pleadings pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1338, 1367, and 1391.
- B. The Parties have read and reviewed the stipulations and terms of this *Consent Judgment and Injunction* and understand the nature, terms, and contents of this *Consent Judgment and Injunction*.
- C. The authorized representative for Jessen Unlimited has certified that he is fully authorized by Jessen Unlimited to enter into the terms and conditions

of this *Consent Judgment and Injunction* and to fully bind Jessen Unlimited to this *Consent Judgment and Injunction* (Attachment to Filing No. 5).

- D. Defendants stipulate and agree that AgriPro owns or licenses valid and enforceable intellectual property rights to the wheat seed protected by virtue of various U.S. Plant Variety Protection Act Certificates, including those varieties known as: AP401 CL, AP502 CL, Benton, Beretta, Big Dawg, Bradley, Coronado, Crawford, Cutter, Douglas, Dumas, Elkhart, Fannin, Foster, Gibson, Gunner, Hanna, Hondo, Ivan, Jagalene, Knudson, Longhorn, Mallard, Mason, Mitchell, Natchez, Norpro, Ogallala, Patton, Pecos, Platte, Savage, Shelby, TAM 111, Thunderbolt, and Tomahawk.
- E. Defendants stipulate and agree that they have knowingly and willfully infringed AgriPro's certificates of plant variety protection.
- F. Defendants stipulate and agree that their actions as set forth in AgriPro's *Complaint* have caused irreparable harm to AgriPro.
- G. Defendants accept the following terms and conditions for purposes of settlement of this case and consent to the entry of a final Judgment according to such terms and conditions stated below, and Defendants agree to be subject to the continuing jurisdiction of the United States District Court in which the lawsuit is situated to enforce the terms of this *Consent Judgment and Injunction*. Accordingly, it is agreed by the Parties that a final judgment should be entered in this cause adopting the following terms.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

A. The *Plaintiff's Motion to Approve Consent Judgment and Injunction* (Filing No. 5) is granted;

B. The *Consent Judgment and Injunction* in favor of the Plaintiff and against the Defendants is hereby approved and entered in this matter, and the Defendants shall immediately inform all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants of the followings terms and conditions of this *Consent Judgment and Injunction*, as follows:

INJUNCTION

1. PROHIBITED ACTIVITIES UNDER THE PLANT VARIETY PROTECTION

ACT. Defendants and all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants are hereby enjoined and permanently restrained from selling, marketing, delivering, shipping, consigning, exchanging, or transferring title or possession of all varieties owned or licensed by AgriPro, except as a class of registered or certified seed contained in an approved designer bag or in a bulk sale bag accompanied by appropriate documentation, which notifies the purchaser of the variety being purchased, as well as AgriPro's rights under the Plant Variety Protection Act. Further, Defendants agree to be permanently enjoined from using AgriPro's federally-protected varieties as any component in non-certified wheat referred to as "variety not stated," "VNS," "bin run wheat," "pasture wheat," "mixed wheat," "feed wheat," or the like.

2. DISPOSITION OF INFRINGING SEED. Within one hundred twenty (120) days of the entry of this *Consent Judgment and Injunction*, Defendants shall cause to be destroyed or otherwise legally disposed of any and all infringing seed under their control or the control of their successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants. Defendants shall provide AgriPro's counsel with copies of appropriate documentation, such as bills of sale, bills of lading, weigh tickets, or other information reasonable and necessary, to establish that each has complied with this obligation and destroyed, sold, or otherwise legally disposed of all infringing seed within Defendants' control or possession.

3. RIGHT OF INSPECTION. AgriPro, by and through an agent, representative, and attorneys, shall have the right to inspect the physical premises of Defendants, including fields, buildings, storage facilities, and other locations under the ownership or control Defendants' successors, assigns, officers, agents, employees, representatives, and/or all other entities or persons in active concert or participation with Defendants. The right of inspection shall include the opportunity to take representative samples of crops, stored seed, or bagged seed available for sale to the public. The right of inspection shall also include the right to make undercover purchases. The right of inspection shall expire five (5) years following entry of this *Consent Judgment and Injunction*.

AWARD OF DAMAGES TO PLAINTIFFS

4. AWARD TO PLAINTIFFS. Defendants shall be liable, jointly and severally, to AgriPro for damages in the amount of forty-nine thousand dollars (\$49,000.00) for the purposes of rectifying the harm to AgriPro caused by Defendants.

5. DEFENDANTS' COSTS. Defendants shall bear their own attorneys' fees and costs.

RELEASE OF CLAIMS

6. RELEASE OF CLAIMS AND WAIVER OF TRIAL BY DEFENDANTS. The Parties release and relinquish all rights, benefits, causes of action, and claims, if any, arising out of or pertaining to Defendants' unauthorized sale and use of AgriPro's wheat varieties, including release of AgriPro's authorized agents or attorneys, all such claims to be released occurring prior to the execution of this *Consent Judgment and Injunction* and which arise out of or relate to the matters that form the basis of AgriPro's *Complaint*. Further, Defendants waive their right to trial and appeal of all rights, benefits, causes of action, and claims arising out of or relating to the subject matter forming the basis of AgriPro's *Complaint*.

IT IS SO ORDERED.

Dated this 16th day of January 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge